IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 32 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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BANSILAL BHAGWANDAS BHAIYYA

Versus

DALSUKHBHAI BALABHAI TADVI

Appearance:
1. First Appeal No. 32 of 1989
MR RAJNI H MEHTA for the appellants
..... for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE K.A.PUJ

Date of decision: 08/04/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.H.KADRI)

1. The appellants, who are the driver, the owner and the Insurance Company of the offending vehicle, namely, motor truck bearing Registration No.GRS 5902, have, by filing this appeal under Section 110-D of the Motor Vehicles Act, 1939, questioned the judgment and award dated July 11, 1988, passed by the Motor Accident Claims Tribunal (Main) Vadodara, in MAC Application No.23 of 1986.

2. The respondent, on the date of the accident, i.e. on November 2, 1985, was returning from his labour work. When the claimant had reached village Jetpur, the motor truck No.GRS 5902 knocked him down, as a result of which, he sustained as many as seven injuries. At the time of the accident, the deceased was aged 60 years and was earning income of Rs.20 per day out of labour work. The claimant, due to the accidental injuries, was admitted in Tilakwada Hospital, from where, he was shifted to the SSG Hospital, at Vadodara. In the SSG Hospital, he remained as indoor patient for about 2.1/2 months and as many as six to seven operations were performed. Ultimately, his right leg below the knee joint came to be amputated. The claimant filed MAC Application No.23 of 1986 in the Motor Accident Claims Tribunal, Vadodara, claiming compensation of Rs.1,50,00/- for the accidental injuries and permanent disablement suffered by him due to the rash and negligent driving of the driver of the motor truck No.GRS 5902. The claim application was resisted by the Insurance Company on various grounds. It may be noted that the driver and the owner of the offending vehicle, though served with the summons of the application, did not to file written statement. The Tribunal framed issues at Exh.29. The claimant himself was examined atExh.30. Dr. Anilkumar Navnitlal Shah, Assistant Professor, Orthopaedic Department of SSG Hospital, Vadodara, was examined at Exh.34. The evidence of the claimant and the Doctor proved that the claimant had sustained seven injuries in the vehicular accident which had ultimately resulted into amputation of right leg below the knee joint. The Tribunal, looking to the prolonged treatment and number of operations performed on the claimant, had awarded Rs.1,02,400/- under different heads, as under:

Rs.35,000/-	For pain, shock & suffering for amputation.
Rs.30,000/-	For pain, shock & suffering for six fractures.
Rs.2,700/-	For loss of income
Rs.1,000/-	For artificial limb
Rs.900/-	For loss of income to attendant
Rs.28,800/-	For future economic loss Rs.300 x Rs.12 x

8 (multiplier).

Rs.4,000 For medicine & attendance charges

3. Learned advocate, Mr. R.H. Mehta, for the appellant, has taken us through the entire record and proceedings, and has contended that the award of the Tribunal is on the higher side and requires to be reduced on the head of pain, shock and suffering. In our opinion, the submission of the learned advocate for the appellant does not deserve any merit. Looking to the prolonged treatment and the number of operations performed at the SSG Hospital, Vadodara, and the amputation of the right leg below knee joint, the Tribunal was justified in awarding Rs.35,000/- for pain, shock & suffering for amputation and Rs.30,000/- for pain, shock & suffering for six fractures. The claimant had undergone a great pain and agony during the prolonged treatment. The awards of compensation on other heads, including the interest, are also quite just and proper, and do not call for any interference.

4. As a result of foregoing discussion, we confirm the judgment and award dated July 11, 1988, passed by the Motor Accident Claims Tribunal (Main) Vadodara, in MAC Application No.23 of 1986. The appeal is dismissed with no order as to costs.

April 8, 2002 (M.H. Kadri, J.)

(K.A. Puj, J.)

(swamy)